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Federal Communications Commission  
Office of the Secretary

In re Applications of

**NORMANDY  
BROADCASTING CORP.**

File No. BRH-910129UR

For Renewal of License of  
Station WYLR(FM) (95.9 Mhz)  
Glens Falls, New York

and

**LAWRENCE N. BRANDT**

File No. BPH-910430MB

For a Construction Permit for  
a new FM Station on 95.9 Mhz  
at Glens Falls, New York

To: Administrative Law Judge  
Richard L. Sippel

## MOTION FOR SUMMARY DECISION

Lawrence N. Brandt, ("Brandt"), by his attorney and pursuant to Section 1.251 of the Commission's Rules, 47 C.F.R. §1.251, hereby moves for summary decision of the following issue in this proceeding:

To determine whether the findings and conclusions about the character qualifications of Normandy in Barry Skidelsky, 6 FCC Rcd. 2221 (ALJ 1991), should disqualify Normandy in the Glens Falls renewal proceeding.

## I. Procedural History

Normandy was an applicant for a new FM station in Queensbury, New York. In that proceeding, MM Docket 90-181, the following three basic qualifications issues were specified against Normandy:

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- (1) To determine whether Normandy engaged in misrepresentation, or was lacking in candor, when it certified in its application that it had reasonable assurance of a transmitter site,
- (2) To determine whether Normandy engaged in material misrepresentations in its Threshold Showing Concerning Broadcast Record, and
- (3) To determine whether Normandy misrepresented and/or lacked candor in its representations to the Commission about who has ownership interests in the applicant.

After an evidentiary hearing, Administrative Law Judge Kuhlman (the "ALJ") resolved all three of these qualifications issues against Normandy and held that Normandy was not qualified to be the licensee of the Queensbury facility because "it has not established that it can be relied upon to provide truthful information to the Commission." Barry Skidelsky, 6 FCC Rcd. 2221, 2232 (released April 29, 1991).

The Review Board upheld the disqualification of Normandy based on the lack of a transmitter site, but it did not address the other two issues raised in the Initial Decision regarding Normandy's character qualifications. Barry Skidelsky, FCC 91R-115 (released January 2, 1992)(the "Queensbury Decision").

The Hearing Designation Order in this case, DA92-11 released January 21, 1992 ("HDO") stated that because the Review Board's decision in Queensbury was not yet final, there remained the possibility that the Commission would find that Normandy lacks the requisite character qualifications to be a Commission licensee and that such a finding would raise material and substantial questions concerning Normandy's qualifications to

continue as the licensee of WYLR. Therefore, the HDO specified the following contingent issue in this case:

- (b) If a final decision is rendered in the Queensbury, New York, proceeding (MM Docket No. 90-181) in which it is determined that Normandy lacks the basic qualifications to be a Commission permittee or licensee, to determine the effect(s) thereof on Normandy's basic qualifications to remain the licensee of Station WYLR(FM), Glens Falls, New York.

On January 24, 1992, the Mass Media Bureau filed a Petition for Reconsideration ("Petition") of the Queensbury Decision, wherein the Bureau asked the Review Board to make a final determination regarding Normandy's character qualifications under the two issues that the Board had not resolved in the Queensbury Decision, since the resolution of these issues might have a significant impact on Normandy's renewal qualifications as an applicant in this proceeding. In response to the Mass Media's Petition, the Board issued a Memorandum Opinion and Order, FCC 92R-16 released February 19, 1992 ("Order"), wherein it declined to reconsider its prior decision in Queensbury, but proposed to "treat the matter in a manner we believe will alleviate all legitimate concerns." The Board's proposed resolution was that the misrepresentation issues that were left unresolved with respect to Normandy in the Queensbury proceeding should not be relitigated in this proceeding; instead, "an issue should be framed exactly as it was in Ocean Pines" which would provide for the ALJ in this proceeding to decide the legal effect of the adverse character findings in the Queensbury proceeding on Normandy's qualifications to continue as the licensee of WYLR.

In response to the Board's Order, Brandt filed a "Petition to Modify and Enlarge Issues," requesting that Issue (b) of the HDO be modified to read as follows:

To determine whether the findings and conclusions about the character qualifications of Normandy in Barry Skidelsky, 6 FCC Rcd. 2221 (ALJ 1991), should disqualify Normandy in the Glens Falls renewal proceeding.

By Order 92M-381, released March 26, 1992, Brandt's Petition was granted and Issue (b) was modified as Brandt had requested.

**II. No Issues of Material Fact Exist As To Whether Normandy Is Basically Qualified to be a Commission Licensee**

Section 1.251(a)(1) of the Commission's rules, 47 C.F.R. §1.1251(a)(1), permits any party to an adjudicatory proceeding to move for a summary judgement of all or any of the issues set for hearing. The rule also states the burden of proof required in order for a summary decision to be granted:

The party filing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing. Id.

Requests for summary decision should be granted only where "the truth is clear, where basic facts are undisputed, and the parties are not in disagreement regarding material factual inferences that may be drawn from such facts." Big Country Radio, 50 FCC 2d 967, 968 (Rev. Bd. 1975).

There are no issues of material fact that must be relitigated before a decision can be made regarding Normandy's basic qualifications to continue to be a Commission licensee. The Board's Order requires the judge in this case to take

official notice of the findings and conclusions from the record in the Queensbury Decision, and to decide whether, based on this record, Normandy should be disqualified from the Glens Falls renewal proceeding. Because official notice can be taken, additional affidavits are not required to meet the requirements of Section 1.251(a)(1).

Based on the findings of the ALJ in the Queensbury Decision, Normandy must be found to be basically disqualified to be a Commission licensee. The ALJ in Queensbury disqualified Normandy on three issues. First, under the site misrepresentation issue, the ALJ concluded based on the record that "Normandy designated a site for which it had no assurance and that it knew when it designated the site that it had none." 6 FCC Rcd. at 2229. The ALJ noted that the assurance of an antenna site is one of only a few substantive questions about an applicant's proposal that is required on Form 301, and that Normandy's misrepresentation on this question raises serious questions about Normandy's qualifications:

If the Commission cannot rely on a truthful answer when so little is asked, it is unlikely that it will be able to do so when the applicant must act as a steward of the public interest over an extended period of time. Normandy has not established that it responded honestly when it told the Commission that it had reasonable assurance for the use of Mr. Abess' land. Id.

Second, the ALJ found that Normandy's Threshold Showing on its nonentertainment programming was carelessly prepared, could not be relied upon and was in material respects untruthful. Id. The ALJ also found that Normandy's representations about the

quantity of programming carried on WWSC/WYLR-FM turned out to be exaggerated or untruthful and that the logs distorted the actual amount of time devoted to various program categories. Thus the ALJ concluded that:

The number and breadth of the errors in Normandy's Threshold Showing were more than exaggerations: Normandy's material claims were false or unsubstantiated. Normandy's Threshold Showing may not have been a planned deception but the showing was done with so little care, the errors were so pervasive and its response to the designated issue so inadequate that Normandy destroyed any possibility that the assertions about its broadcast record can be relied on. Id.

The ALJ also emphasized that, in the context of threshold showings, "irresponsible pleading merits serious condemnation." Amer. International Development, Inc., 86 F.C.C.2d 808, 817 (1981). The most important criteria for licensees and applicants is truthfulness and complete candor; both of which the ALJ found Normandy to lack. Id.

Finally, the ALJ found that not only did Normandy fail to report a contingent ownership, but that Mr. Lynch's explanation of why he acted as he did was inconsistent with reliable, trustworthy behavior. Id. at 2230. The ALJ noted that while this issue standing alone would not be disqualifying, the three misrepresentations combined make it:

evident that the Commission cannot rely on Normandy's representations in this proceeding and that there is a substantial likelihood that Normandy will not make a trustworthy licensee. Id. at 2230-31.

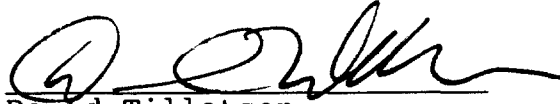
### III. Conclusion

In Policy Regarding Character Qualifications in Broadcasting Licensing, 102 FCC 2d 1179 (1985), the Commission stated that:

misrepresentation or lack of candor to the Commission...should be considered as qualifications issues bearing on an applicant's likely future broadcast performance.... The act of willful misrepresentation not only violates the Commission's Rules; it also raises immediate concerns over the licensee's ability to be truthful in any future dealings with the Commission.

In light of the importance that the Commission places on truthfulness and candor from its licensee, the fact that Normandy was found to have committed three separate misrepresentations in the Queensbury proceeding clearly disqualifies Normandy from continuing as the licensee of WYLR. Accordingly, Brandt submits that Issue (b) should be resolved against Normandy by summary decision.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Tillotson', written over a horizontal line.

David Tillotson  
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Counsel for Lawrence N. Brandt

April 7, 1992

**CERTIFICATE OF SERVICE**

I, Alethea R. Wilson, a secretary in the law office of Arent, Fox, Kintner, Plotkin & Kahn do hereby certify that a copy of the foregoing **MOTION FOR SUMMARY DECISION** has been sent via U.S. Mail, First-Class postage prepaid this 7th day of April, 1992 to the following:

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\*Hand Delivered